

OECA and Regional Report

Week Ending September 24, 2010

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Office of Compliance

Regular Highlights:

Enforcement and Compliance Assurance Issues

Strategic Plan Revisions Sent to OMB for Consideration

On September 21, OECA forwarded to OCFO a second set of revisions of the enforcement measures sections in the draft FY 2011-2015 Strategic Plan for forwarding to OMB. These revisions were in response to OMB's comments of September 20. We expect to reach closure with OMB soon. Contact: Christopher Knopes, 202-564-2337.

OECA's Consolidated Comments on Draft Kansas and Final Missouri SRF Reports

The Office of Compliance provided OECA's consolidated comments to Region 7 on the draft Kansas CAA State Review Framework (SRF) report and the proposed final Missouri CWA SRF report. The process calls for Region 7 to incorporate the comments prior to finalizing each report. Contact: Maureen Lydon, 202-564-4046.

National Fumigant Pesticide Inspector Residential Training

The Office of Compliance sponsored the Fumigation Pesticide Inspector Residential Training (PIRT) in Las Cruces, New Mexico. The New Mexico Department of Agriculture (NMDA) hosted the course. The focus of the course was on the various fumigation products, application methods, and inspection criteria for soil, commodity, structural and rodent burrow fumigant uses. The objective of the course was to provide pesticide inspectors with information and to provide tools and training for conducting thorough fumigant product and use inspections. Contact: Amar G. Singh, 202-564-4161.

Basic Inspector Training

NETI delivered two "Basic Inspector Training" courses, one in DC and one in Region 3. This course, which is mandatory for EPA inspectors, is designed for new inspectors (although also an excellent refresher for experienced inspectors) and provides the fundamentals for performing inspections under any environmental program. Contact: Jeff Lightner (Region 3 course), 303-236-6770; Deborah Hanlon (DC course), 202-564-0425.

Fall Legal Intern Schedule Announced; Most Available as Webinars

OECA has approximately 30 Legal Interns this semester and a part of their training is attendance at a variety of environmental enforcement seminars. The programs are held every Friday until December 3; starting October 1. All programs will be offered as webinars for regional and state participation. Please feel free to send this information to other agencies. For more information or to register for a webinar, please contact Helene Ambrosino at ambrosino.helene@epa.gov or 202-564-2627.

“Principles of Environmental Enforcement” Training To Be Held in DC

On September 28, NETI hosts a one-day version of the “Principles of Environmental Enforcement” training for staff in the newly-reorganizing Office of Compliance. This course, offered internationally in more than 50 countries, offers a broad view of the enforcement and compliance “cycle” from developing the awareness of environmental problems, through development of an enforcement and management program to assessment and evaluation of results, with opportunities for mid-course corrections. OC personnel will serve as instructors. Davis Jones, Associate Director in OECA’s Office of Federal Activities, will provide overall management of the course. Contact: Mike Walker, 202-564-2624.

CWA Action Plan New Approaches

On September 21, the Assistant Administrator's for OECA and Water met with the EPA State Steering Committee to discuss new approaches for revamping the NPDES program, in particular designing a new system to focus regulatory actions (permitting, compliance monitoring, and enforcement) on the most important sources impacting water quality. An agency decision on which set of new approaches will be implemented is expected in October. Contact: David Hindin, 202-564-1300.

Office of Federal Activities

Regular Highlights:

Enforcement and Compliance Assurance Issues

One-Week Study Tour for Eastern Europeans

OFA organized the program for a visit by eight officials from the Czech Republic, Hungary, Poland, and Slovakia during the week of September 20-24, in cooperation with the U.S. Forest Service and with logistical assistance from INECE. EPA classroom presentations included an OECA overview, compliance assistance, hazardous waste (RCRA) and contaminated site (CERCLA) management, and compliance-assurance performance measurement. The visitors received a briefing from the Office of Congressional and Intergovernmental affairs, toured Capitol Hill, attended the first day of an EPA inspector training course, and met with the Department of Justice. One day was spent in separate field trips, with the EPA group visiting the Blue Plains waste-water treatment facility and the municipal waste management facility in Lorton, Va. Later in the fall, an OECA Office Director and USFS senior law enforcement officer will visit Prague to continue the exchange of technical assistance. Contact: Davis Jones, 202-564-4108; Richard Emory, 202-564-7138.

EIS Comment Letters Conveying Adverse Ratings

Region 8 is proposing an adverse rating on the BLM draft EIS for the Greater Natural Buttes Oil and Gas Development. This project is located in Uintah County, Utah and has major air quality issues. The comment letter is due on September 27, 2010. Contact: Bob Hargrove, 202-564-7157.

EIS and Section 309 Review Synopsis

Pursuant to a 1978 Memorandum of Agreement between the Council on Environmental Quality (CEQ) and EPA, OFA is responsible for the receipt and filing of all Federal agency EISs. In accordance with CEQ's regulations, OFA publishes in the *Federal Register (FR)* a weekly Notice of Availability (NOA) of EISs received the preceding week. During the week of September 13-17, twelve EISs were filed. In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the Federal Register. Since February 2008, EPA has been including its comment letters on EISs on its website at: <http://www.epa.gov/compliance/nepa/eisdata.html>. Including the entire EIS comment letters on the website satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the Federal Register. Contact: Pearl Young, 202-564-1399; Dawn Roberts, 202-564-7146.

Region 1

Regular Highlights:

Enforcement and Compliance Assurance Issues

Region I Files CAA 112R Administrative Complaint Against Tanner Industries, Inc.

Region I filed an administrative complaint against Tanner Industries, Inc. for violations of Section 112(r) of the Clean Air Act and the regulations at 40 C.F.R. Part 68. Tanner operates a number of ammonia distribution facilities across the country, including one in East Providence, Rhode Island. Tanner failed to employ sensors or monitors at the East Providence facility that could detect leaks of ammonia, or that could detect conditions that might lead to such leaks. The company's emergency response program was also deficient regarding communication and coordination with local emergency response agencies in the event of an emergency. Contact: Jim Gaffey, 617-918-1753; Greg Dain, 617-918-1884.

Region I Issues RCRA Complaint to Maine Company for Hazardous Waste Management Violations

On September 17, 2010, Region I filed an administrative complaint against Southern Maine Specialties, Inc. (SMS) for alleged violations of RCRA, the federal hazardous waste management regulations, and Maine's Hazardous Waste Management Rules. SMS is a metal finishing and electroplating facility located in Saco, Maine. The complaint alleges that SMS failed to comply with hazardous waste management standards. Contact: Skip Hull, 617-918-1882; Christine Foot, 617-918-1333.

Region I Granted Order for Access to Navy Yard Mills Superfund Site, Dracut, MA

On September 17, 2010, the U.S. District Court (D. Mass.) issued an order under CERCLA § 104(e) authorizing EPA to enter the Navy Yard Mills Superfund Site for the purpose of performing a removal action under CERCLA. The owner had installed mitigation equipment and had belatedly said it would perform the removal action under state law. On this basis, the owner had argued that EPA's request for access was arbitrary and capricious. The court rejected this argument. The court said only the statutory elements of 104(e) were relevant and that it did not have jurisdiction to review EPA's plan for removal. It also concluded that EPA was entitled to discount the owner's purported plan to perform the removal under state law. The court distinguished *United States v. Tarkowski*, a Seventh Circuit case in which EPA's request for an order was denied. The court said the case was "irrelevant" to the Navy Yard Mills site, because in *Tarkowski* the property contained "no risk of environmental hazard." EPA's claim for penalties for the owner's violation of an administrative order for access is still pending with the court. Contact: Wesley Kelman, 617-918-1540; Tina Hennessy, 617-918-1216; Catherine Young, 617-918-1217.

EPA Reaches Settlement with the Town of Dennis, MA for Violations of the Small MS4 Storm Water Permit [Docket No. CWA-01-2009-0072]

EPA has reached a Clean Water Act Consent Agreement and Final Order with the Town of Dennis, Massachusetts, relating to the Town's violation of the Small Municipal Separate Storm Sewer System general permit. The settlement provides that the Town will pay a cash penalty of \$2,000 and implement a Supplemental Environmental Project (SEP) worth at least \$24,400. Contact: Kathleen Woodward, 617-918-1780; Andrew Spejewski, 617-918-1014.

Region I Issues CWA Order to Town of Jaffrey, New Hampshire for NPDES Violations

On September 22, 2010, EPA issued a Clean Water Act Administrative Order to the Town of Jaffrey, New Hampshire (Jaffrey) for violations of the effluent limits contained in its NPDES Permit. Contact: Edith Goldman, 617-918-1866; Joy Hilton, 617-918-1877.

EPA Sends Smart Way Electronic Update to 405 Partners

Region I sent a September 17, 2010 SmartWay New England E-Update to 405 partners and collaborators. Topics included partner news, program developments, SmartWay- related clean diesel and Maritime Administration grants, upcoming grant opportunities, events and resources. Contact: Abby Swaine, 617-918-1841.

EPA Presents Diesel Emissions Information at Transportation Meeting

Region I participated in the September 14th I-95 Corridor Coalition Intermodal Work Plan meeting and webcast. EPA provided the attendees (mostly state transportation departments) information on a variety of topics, including idle limit compliance, coastal emission control areas, the new US Maritime Administration-funded coastal shipping projects, freight-related clean diesel projects recently awarded by Region I, and the upcoming competition. Contact: Abby Swaine, 617-918-1841.

EPA Presents Smart Way Program Information to State and EPA Enforcement Officials

Region I gave a presentation on SmartWay and related opportunities to 14 state and EPA compliance and enforcement officials on September 15th in Wilmington, Massachusetts. The group expressed interest in using SEPs, NEPA, and settlement meetings to leverage advancement of SmartWay strategies. We will provide follow-up information on SmartWay-relevant regional and state DERA grant awards in 2009 and 2010. Contact: Abby Swaine, 617-918-1841.

EPA Conducts CAMEO Training in Maine

On September 22-24 in Augusta, Maine, EPA, in conjunction with the Maine State Emergency Response Commission conducted a Computer Aided Management of Emergency Operations (CAMEO) Train-the-Trainer instructor certification program. The purpose of the certification program is to establish high standards of professionalism and expertise for CAMEO trainers. The program attempts to provide a measure of quality assurance and competency within the CAMEO training network. 21 people attended. Contact: Len Wallace, 617-918-1835.

Region 2

Regular Highlights:

Enforcement and Compliance Assurance Issues

Consent Decree Signed for Remedial Action and Cost Recovery at Chemical Leaman Superfund Site, Logan Township, NJ

On September 17, 2010, Region 2 signed and forwarded to DOJ a judicial consent decree for the performance of the Operable Unit #2 remedy at the Chemical Leaman Tank Lines, Inc. Superfund Site, located in Logan Township, Gloucester County, New Jersey. The parties to the consent decree are the United States and Quality Distribution, Inc. Pursuant to the consent decree, the Settling Defendant will implement the remedy selected in the Record of Decision issued by EPA in September 2009. The remedy includes in-situ thermal treatment with soil vapor extraction, one or more NAPL recovery systems, and the installation of additional groundwater pumping wells. It is projected to cost \$5 million. The consent decree also requires the Settling Defendant to pay \$1.57 million to settle the claim of the United States for \$1,929,834.54 in "Past Response Costs" incurred relating to OU2; to reimburse "Future Response Costs" incurred by EPA in overseeing implementation of the OU2 RD/RA; and to reimburse "Future Response Costs" incurred by EPA in connection with the Operable Unit Three remedy for the Site. Contact: Juan Fajardo, 212-637-3132; Delmar Karlen, Jr., 212-637-3118.

Administrative Complaint Issued for Violation of Lead-Based Paint Disclosure Rule

On September 3, 2010, EPA Region 2 filed an Administrative Complaint against Wedgewood Apartments, LLC of New Hartford, NY. Wedgewood Apartments consists of 93 units in a singly owned Limited Liability Corporation. The complex does not appear to house children, and none were cited in the Complaint. Wedgewood was cited for TSCA violations, specifically the Lead-Based Paint (LBP) Disclosure Rule (Section 1018), for total non-disclosure, with a proposed penalty of \$19,380. Contact: James Crossmon, 732-452-6409; Henry Mazzucca, 732-321-6765.

Region 3

Regular Highlights:

Enforcement and Compliance Assurance Issues

Erie Forge and Steel, Inc. Enters into TSCA PCB Challenge Consent Agreement/Final Order Requiring Payment of \$12,700. [Docket No. TSCA 03-2010-0366]

On Sept. 16, 2010, EPA Region III entered into a Consent Agreement/Final Order, with Erie Forge and Steel, Inc. for an alleged violation at the Facility in Erie, Pennsylvania, as a result of the enforcement initiative known as the *PCB Challenge*. This enforcement action addresses and resolves a violation of TSCA and of the regulations implementing TSCA Section 6(e), regarding the unauthorized use of five PCB transformers which were not registered by the regulatory deadline. Respondent has removed the five PCB transformers at issue from its Facility, is in the process of disposing of such transformers in accordance with 40 C.F.R. Part 761, and will pay a penalty of \$12,700.00 for the unauthorized use violation. As a result of this action, 18,157 pounds of PCB have been eliminated from the environment. To date, over 84,000 pounds of PCB have been removed from the environment as a result of Region III's implementation of the *PCB Challenge*. Contact: Cheryl L. Jamieson, 215-814-2375

EPA Region III Settles CERCLA/EPCRA Matter With Tuscan/Lehigh Dairies, Inc. for \$18,540 After Ammonia Release. [Docket Nos. CERC/EPCRA-03-2010-0361]

The Regional Judicial Officer issued a Final Order on September 16, 2010, accepting the Consent Agreement to settle violations of CERCLA Section 103 and EPCRA Section 304 in connection with the release of ammonia from a milk processing facility owned and operated by Tuscan/Lehigh Dairy, Inc., located at 880 Allentown Road in Landsale, Pennsylvania. The Respondent failed to immediately notify national, state and local emergency officials after the release. In settlement, Respondent has agreed to pay a cash penalty of \$18,540.00. Contact: Cynthia Weiss, 215-814-2659, Perry Pandya, 215-814-3167

Over \$600,000 to be Paid Under CERCLA Consent Decree Entered for the UGI Columbia Gas Plant Superfund Site in Columbia Borough, PA

A consent decree in United States and the Commonwealth of Pennsylvania v. PPL Electric Utilities Corporation and UGI Utilities, Inc., Civil Action No. 10-cv-3477 (E.D.Pa.), was entered on September 15, 2010 by the United States District Court for the Eastern District of Pennsylvania. Under the consent decree, PPL Electric Utilities Corporation and UGI Utilities Inc. have agreed to pay \$606,114.53 to the United States in return for contribution protection and a covenant not to sue. This settlement accounts for approximately 85% of EPA's past costs. Contact: Sheila Briggs-Steuteville, 215-814-2468, David Turner, 215-814-3216.

District Court of Maryland Rules in EPA's Favor on Preliminary Emission Calculation Issues in Westvaco Litigation

On September 1, 2010, the District Court of Maryland issued the second phase of its decision on the legal standards to be used to calculate emission increases/decreases resulting from modifications made by Westvaco to its digesters and power boilers at its pulp and paper mill during its digester expansion project in the early to mid-1980s. The calculations are necessary to determine whether there was a "significant net emission increase" that would trigger a Prevention of Significant Deterioration (PSD) review and likely lead to the installation of best available control technology (BACT). The decision on preliminary legal issues upheld EPA's position that the baseline period for calculating pre-change emissions was the two-year period immediately preceding the changes and that post-change emissions were to be determined by the facility's potential to emit. Westvaco Corporation owned and operated an integrated kraft pulp and paper mill located on the border of Maryland and West Virginia (Luke, MD and Beryl, WV). The facility is known as the Luke Mill and is currently owned and operated by New Page Corporation. It is one of the largest sources of sulfur dioxide pollution in the State of Maryland. Mark Elmer, U.S. DOJ, is the lead attorney in this matter. Contact: Robert Stoltzfus, 215-814-2695

RCRA C Administrative Complaint Filed Against Norka Manufacturing, Inc., Watsonstown, Pa. [Docket No. RCRA-03-2010-0398]

On September 22, 2010 an Administrative Complaint and Notice of Opportunity for Hearing was issued against Norka Manufacturing, Inc. for violations of Section 3008(a)(1) of RCRA identified during inspections conducted by the Pennsylvania Department of Environmental Protection of the Norka Facility on November 12, 2009 and again on March 4, 2010, as well as through a subsequent EPA investigation.

This Complaint alleges Norka Manufacturing, Inc. owned and operated a hazardous waste storage facility without a permit or interim status, failed to make hazardous waste determinations, and failed to conduct inspections of its hazardous waste storage area at least weekly. Since the investigation began, Norka has closed this Facility and removed all hazardous waste from the premises. No specific penalty amount is being pled at this time. Norka has thirty days in which to answer the Complaint. Contact: Joyce Howell, 215-814-2644; Jan Szaro, 215-814-3421

Ship Management Corporation in Panama Sentenced to Pay \$4 Million in Criminal Penalties for Concealing Deliberate Vessel Pollution into the Ocean

Irika Shipping S.A., a ship management corporation registered in Panama and doing business in Greece, was sentenced on September 21, 2010, by Maryland U.S. District Court Judge J. Frederick Motz, after having pled guilty to felony obstruction of justice charges and violations of the Act to Prevent Pollution from Ships (APPS), for concealing deliberate vessel pollution from the *M/V Iorana*, a Greek flagged cargo ship that made port calls in Baltimore, Maryland; Tacoma, Washington; and New Orleans, Louisiana.

In the multi-district sentence (which covered the District of Maryland, the Western District of Washington, and the Eastern District of Louisiana), Irika Shipping was ordered to pay a \$4

million total penalty, serve the maximum possible five-year period of probation, and develop a rigorous compliance program with outside independent audits, regular reports to the Court, and a Court Appointed Monitor.

The sentence includes a \$3 million criminal fine and \$1 million in organizational community service payments that will fund various marine environmental projects. In Maryland, \$750,000 will go to the congressionally established National Fish & Wildlife Foundation and be used for Chesapeake Bay projects. In Washington, \$125,000 will go to environmental projects in and around the waters of Puget Sound and the Straits of Juan De Fuca. In Louisiana, \$125,000 will go toward funding habitat conservation, protection, restoration, and management projects to benefit fish and wildlife resources and habitats.

The U.S. Attorney's Office in Baltimore, Maryland, held a press conference to emphasize the importance of this case. United States Attorney Rod Rosentein led the conference. EPA Region 3 Deputy Regional Administrator William Early spoke about the importance of this successful prosecution as it relates to the agency's efforts to protect the Chesapeake Bay. Other speakers included Fred Burnside, Director of EPA's Office of Criminal Enforcement in Washington, District of Columbia. Attending were numerous managers, including David Dillon, Special Agent-in-Charge of EPA's Criminal Investigation Division, Philadelphia Office.

A criminal investigation started in January 2010, when a crew member passed a note to the Customs and Border Protection inspector upon the ship's arrival in Baltimore alleging that the ship's chief engineer had directed the dumping of waste oil overboard through a bypass hose that circumvented pollution prevention equipment required by law. The whistleblower's note stated: "We are asking help to any authorities concerned about this, because we must protect our environment and our marine lives." Three other crew members provided key information to the government. Judge Motz ordered that these four individuals receive whistleblower rewards (pursuant to APPS) of \$500,000.

EPA's Criminal Investigation Division and the U.S. Coast Guard Investigative Service investigated this matter, with assistance from the U.S. Customs and Border Protection. The cases were prosecuted by the Environmental Crimes Section of the U.S. Department of Justice, and the U.S. Attorney's Offices in Baltimore, Seattle and New Orleans. Contact: David Lastra, 703-793-8542.

Consent Agreement and Final Order Filed Commencing and Settling CERCLA 103(a) and EPCRA 304 Case Against Mountaire Farms, Inc. of Selbyville, DE for \$13,602. [Docket No. CERCLA-EPCRA-03-2010-0384]

On September 21, 2010, EPA Region III filed an administrative consent agreement and final order simultaneously commencing and resolving an administrative enforcement action against Mountaire Farms, Inc. for violations of Section 103(a) of CERCLA, and Section 304 of EPCRA, for failing to immediately notify the appropriate agencies in connection with ammonia releases on January 14-15, 2007 and February 7, 2008 at the Selbyville facility located at 55 Railroad

Avenue in Selbyville, Delaware. Under the consent agreement, Mountaire Farms, Inc. has agreed to pay a penalty of \$13,602 for the violation. Contact: Alison Lecker, 215-814-2698; Michelle Price-Fay, 215-814-3397.

Bankruptcy Court Enters Settlement Agreement Securing Over \$8 Million for Four Superfund Sites in Region III

On September 17, 2010, the United States Bankruptcy Court for the Southern District of New York entered a Settlement Agreement in the national Chapter 11 bankruptcy case, *In re Chemtura Corporation, et al.*, Case No. 09-11233(REG). The effective date of the Settlement Agreement will be the date the Plan of Reorganization is effective, which could be as late as October 15, 2010. In settlement of the Region's claims, Chemtura has agreed to the following allowed general unsecured claims: \$150,000 for the Central Chemical Site in Maryland; \$300,000 for the Delaware Sand and Gravel Site in Delaware; \$200,000 for the Halby Site in Delaware; and \$4,245,382 for the Stoney Creek Site in Pennsylvania. Chemtura estimates that EPA will recover 100% of its allowed general unsecured claims. In addition, Chemtura has agreed to pay the following cash payments as settlement of its injunctive and other work obligations: \$1,237,500 for the Delaware Sand and Gravel Site; \$450,000 for the Halby Site; and \$1,554,618 for the Stoney Creek Site. Finally, Chemtura has also agreed that certain "Debtor-Owned/Operated Sites," such as Region III's Ordnance Works Disposal Areas Site in West Virginia, shall not be discharged by Section 1141 of the Bankruptcy Code. Contact: Robin Eiseman, 215-814-2612, Andrew Goldman, 215-814-2487, Patti Miller, 215-814-2662, Cynthia Nadolski, 215-814-2673

EPA Lifts CERCLA Lien to Facilitate the Sale of Decommissioned Property

On September 17, 2010, EPA released a lien secured under CERCLA Section 107(I) from one of seven properties owned by Strube, Inc. located in Marietta, Maytown, Mt. Joy and Columbia, Lancaster County, Pennsylvania that comprise the Strube Site. EPA and Strube entered into a Lien Release Agreement on June 21, 2010, addressing the procedures and conditions for which EPA would release, or partially release, its CERCLA Section 107(I) lien from the seven properties. Pursuant to its Pennsylvania Radioactive Materials license, Strube is required to decommission each property that comprises the Site before it can be placed on the market for sale. The net sale proceeds from each sale will be placed in an escrow account, for use in decommissioning the remaining properties, as set forth in an Escrow Agreement between Strube, Pennsylvania Department of Environmental Protection (PADEP), and the escrow agent. The Escrow Agreement creates two separate escrow accounts: Account A and Account B. Strube has agreed with PADEP to contribute money to Account A for the purpose of funding the decommissioning of the remaining properties. Account B, on the other hand, is created to hold in escrow the net sale proceeds from the sale of the decommissioned properties. The Escrow Agreement provides limited situations whereby the Escrow Agent may use funds in Account B to pay for Strube's decommissioning work. However, once the last property is sold, the Escrow Agreement directs the Escrow Agent to transfer the balance of Account B to EPA to satisfy EPA's Lien.

Strube completed the decommissioning of its warehouse located at 131 East High Street, Maytown, Pennsylvania in 2009, and notified EPA of an offer to purchase the property in August 2010. The sale of the Maytown Property closed on September 17, 2010. EPA worked with Strube and the closing agent to ensure that the transfer of the net sale proceeds of the Maytown Property – \$41,556 – were transferred at closing into Account B described more fully in the Lien Release Agreement. Upon transfer of the net sale proceeds to the escrow account, EPA released the Maytown Property from its Lien. As of February 26, 2009, EPA had spent approximately \$5,073,856.41 in response costs in connection with the Site, and future response costs after this date continue to be incurred. Contact: Robin E. Eiseman, 215-814-2612; Leo Mullin, 215-814-3172

Site Owner Requests a Post-Perfection Hearing Before an Agency Neutral Regarding a CERCLA 107(I) Lien Placed on His Property. [Docket No. CERC-03-2010-0332LL]

On September 17, 2010, Mr. John L. Darby, Jr., the owner of the Jay Cee Cleaners, Inc. Site, located at 16163 Lankford Highway in Nelsonia, Accomack County, Virginia requested a post-perfection hearing before a neutral EPA official to present information that EPA did not have a reasonable basis to perfect a lien on the Site. On July 1, 2010, EPA's Regional Counsel signed a Notice of Lien for the Site and a letter providing Mr. Darby with Notice of an Opportunity to be heard, pursuant to Section 107(I) of CERCLA and EPA's Supplemental Guidance on Federal Superfund Liens, dated July 29, 1993.

Section 107(I) provides that the response costs for which a person is liable to the United States, pursuant to Section 107(a), shall constitute a lien in favor of the United States upon property that belongs to such person and that is subject to or affected by the response action. In exceptional circumstances, EPA may perfect a lien simultaneously with giving notice to be heard if EPA believes that its interest in the property could be impaired by imminent transfer of all or a portion of the property or indications that such an event is about to take place. Prior to EPA's involvement with the Site in 2007, Mr. Darby had three potential contracts for sale of the property at auction. At the conclusion of on-Site response activities in March 2010, Mr. Darby asked when a final report closing out the removal action would be issued, stating that the property is clean. EPA issued its final action report for the Site on July 27, 2010. EPA filed the Lien in the Accomack County Records Office on July 13, 2010, and the United States District Court for the Eastern District of Virginia on July 7, 2010.

EPA received CPG's request for an extension to respond to the Lien on August 17, 2010, more than twenty days from the date EPA sent the Lien. However, because the Lien has already been perfected and it is questionable whether Mr. Darby timely received notice of the Lien, EPA extended the period with which Mr. Darby had to respond and request a hearing before a neutral agency official. Contact: Robin E. Eiseman, 215-814-2612; Maria Goodine; 215-814-2488; Wanda Lewis, 215-814-2660.

Baxter Investment Group, Inc., and Edward Klinger D/B/A E.J. Property Cleanup & Salvage Agree to Settle a CAA Asbestos NESHAPS Case for \$20,600 [Docket No. CAA-03-2010-0254]

On September 22, 2010, a Consent Agreement and Final Order (CAFO) was filed settling a CAA Asbestos NESHAPS case. The CAFO was negotiated with Baxter Investment Group, Inc., and Edward Klinger d/b/a E.J. Property Cleanup & Salvage pursuant to Section 113(d) of the Act. EPA determined that a civil penalty of (\$20,600) is appropriate to settle this action. The justification for this penalty is in accordance with the relevant policies. Contact: Russell Swan, 215-814-5387; Richard Ponak, 215-814-2044.

EPA Settles TSCA AHERA Administrative Penalty Action Against Reading School District Located In Reading, Pennsylvania

On September 22, 2010 a Consent Agreement and Final Order (CAFO) was filed resolving violations of the TSCA AHERA. Reading School District located in Reading, Pennsylvania, failed to maintain a complete and updated copy of the management plans in the administrative offices of the Thomas Ford Elementary School and the 12th and Marion Elementary School. Management plans are used to note the location and condition of asbestos-containing materials (ACM) through-out the school. It is the responsibility of the designated person to ensure that the management plan is maintained and updated as required by AHERA. A management plan helps prevent exposure to asbestos by ensuring that any maintenance or other routine school activities will not result in the disturbance of ACM. In addition, whenever ACM needs to be disturbed, only accredited persons are used by the school. Annual notification on the availability of the management plan, allows parents, teachers, and employee organizations the opportunity for reviewing all information regarding ACM in the school. Respondent spent more than \$7,000 (the proposed penalty) in complying with the provisions of TSCA AHERA and the penalty was thus mitigated. Contact: Russell Swan, 215-814-5387; S. Forostiak, 215-814-2136

Division Director Signs Consent Agreement and Final Order in the Matter of Berwick Area Joint Sewer Authority, in the Amount of \$13,500 for Violations of Sections 301 and 402 of the CWA [Docket No. CWA-03-2010-0273]

On September 20, the Division Director, Water Protection Division, signed a Consent Agreement and Final Order (CAFO) issued to Berwick Area Joint Sewer Authority, 1108 Freas Avenue, Berwick, PA 18603-1710, in settlement of violations of Sections 301 and 402 of the CWA. Pursuant to Section 402 of the Act, the Pennsylvania Department of Environmental Protection (the Department) issued to Respondent an NPDES Permit No. PA0023248 on February 1, 2008, for the discharge of pollutants from its Waste Water Treatment Plant into the Susquehanna River. The Permit required Respondent to submit to the Department and EPA a reevaluation of its local limits based on a headworks analysis of its treatment plant within one year of permit issuance. The Permit also required Respondent to submit to the Department and EPA within three months of permit issuance a sampling plan for collection of necessary data. Respondent's sampling plan was received, however Respondent failed to submit its reevaluation of its local limits. Respondent therefore violated the Permit, and Section 301 of the Act. Respondent has agreed to pay a penalty of \$13,500 in settlement of the above violations. Respondent is in the process of

submitting its reevaluation of its local limits. The CAFO is being entered into pursuant to 40 C.F.R. § 22.18(b)(2). Contact: Pam Lazos, 215-814-2658; Lisa Trakis, 215-814-5433.

Consent Agreement and Final Order Filed Commencing and Settling EPCRA Section 313 Case Against Innovative Pressure Technologies LLC Requires Payment of Over \$13,000. [Docket No. EPCRA-03-2010-0380]

On September 23, 2010, EPA Region III filed an administrative consent agreement and final order, which, simultaneously commenced and resolved alleged violations by Innovative Pressure Technologies LLC of Erie, Pennsylvania, of Section 313 of EPCRA. Respondent, a manufacturer of precision-machined high pressure valves, fittings and fluid control gauges, failed to timely file its Form Rs (Toxic Release Inventory Reports) with EPA and the Commonwealth of Pennsylvania for chromium and nickel that it processed during 2006 and 2007. In accordance with the agreement, Respondent will pay a civil penalty of \$13,338. Contact: Janet E. Sharke; 215-814-2689, Craig Yussen, 215-814-2151.

FIFRA Settlement with Sylvan America, Inc. Involving Untimely Reporting of Pesticide Production Requiring Payment of \$2,700 [Docket No. FIFRA-03-2010-0355]

On September 23, 2010, a Consent Agreement and Final Order entered into by the EPA and Sylvan America, Inc. was filed with the Regional Hearing Clerk settling an alleged violation of FIFRA. The alleged violation involved the failure to submit a timely annual pesticide production report for calendar year 2009 in connection with Respondent's facility located in Kittanning, Pennsylvania. According to the CAFO, Respondent is assessed a penalty of two thousand seven hundred (\$2,700) for the alleged violation. This action seeks to encourage pesticide producers to submit timely annual reports. Sylvan America, Inc. is a Pennsylvania corporation in the business of researching manufacturing and selling covered food crops chemicals with headquarters located at West Hills Industrial Park in Kittanning, PA. Contact: Jennifer M. Abramson, 215-814-2066; Kyla Townsend-Mcintyre, 215-814-2045.

FIFRA Settlement with Sylvan Bio, Inc. Involving Untimely Reporting of Pesticide Production Requiring Payment of \$2,700. [Docket No. FIFRA-03-2010-0354]

On September 23, 2010, a Consent Agreement and Final Order entered into by the EPA and Sylvan Bio, Inc. was filed with the Regional Hearing Clerk settling an alleged violation of FIFRA. The alleged violation involved the failure to submit a timely annual pesticide production report for calendar year 2009 in connection with Respondent's facility located in Kittanning, Pennsylvania. According to the CAFO, Respondent is assessed a penalty of two thousand seven hundred (\$2,700) for the alleged violation. This action seeks to encourage pesticide producers to submit timely annual reports. Sylvan Bio, Inc. is a Pennsylvania corporation in the business of producing a wide variety of fungal cells using solid-substrate fermentation technology with headquarters located at 90 Glade Drive in Kittanning, PA. Contact: Jennifer M. Abramson, 215-814-2066; Kyla Townsend-Mcintyre, 215-814-2045.

OGC Issues

ORC Continues to Provide Counsel to Region Regarding Chesapeake Bay TMDL

The Office of Regional Counsel continues to provide counsel to the Water Protection Division, the Chesapeake Bay Program and the Regional Administrator's Office in development of the proposed Chesapeake Bay total maximum daily load (TMDL). EPA is publishing the proposed Bay TMDL on September 24, 2010 for a 45 day public review and comment period. EPA is issuing the Bay TMDL pursuant to Section 303(d) of the CWA to address nutrient and sediment pollution impairing the aquatic life uses of the Chesapeake Bay. This TMDL will be the largest and most complex TMDL yet established, covering the entire 64,000 square mile watershed and setting individual wasteload allocations for almost 500 significant NPDES point sources from Lynchburg, VA to Binghamton, NY along with aggregate allocations to thousands of other point and nonpoint sources.

The Bay TMDL is being issued in accordance with Executive Order 13508 (May 12, 2009) to direct federal efforts to restore the Chesapeake Bay water quality. EPA has worked closely with the watershed states in development of this TMDL and has consulted extensively with its federal partners including USDA and DOD. EPA will establish the final TMDL by December 2010. The Bay TMDL will satisfy obligations under Consent Decrees regarding the DC and Virginia TMDL programs. Kelly Gable and Chris Day are providing counsel on many issues, editing the Bay TMDL documents and closely coordinating with the EPA Office of General Counsel. Contact: Kelly Gable, 215-814-2471; Chris Day, 215-814-2481.

Region 4

Hot Topics:

OGC Issues

Regular Highlights:

Enforcement and Compliance Assurance Issues

Region 4 Refers BCX Tank Superfund Site Cost Recovery Consent Decree (CD) to DOJ for Lodging

On September 22, 2010, EPA Region 4 signed a cost recovery CD for the BCX Tank Superfund Site (Site) in Jacksonville, Duval County, Florida, and referred the CD to DOJ for lodging with the U.S. District Court for the Middle District of Florida. EPA spent more than \$1 million to contain the overflow and spillage of industrial wastewater, used oil, and rainwater mixture from approximately 15 large tanks at the Site. The full tanks, which contained hazardous substances, had been abandoned by the owners and operators of the Site and had deteriorated to the point where they could no longer hold their contents. The Settling Defendants under the CD are Seven Out, LLC, which owns the Site, and BCX, Inc., which operated the Site. EPA has determined that neither the owner nor the operator company has any ability to pay beyond the proceeds payable to them under an insurance policy. Accordingly, the terms of the CD are that the Settling Defendants will facilitate payment to EPA of \$350,000 in insurance proceeds and will pay EPA any proceeds that may eventually come from the sale of the Site property. Contact: Stacey Haire, 404-562-9676; Karen Coleman, 404-562-8853.

Stipulation and Complaint Filed in \$900,000 Settlement with Meridian Industries, Inc. for RCRA Violations

On September 17, 2010, the United States filed a Complaint and a Stipulation of Settlement with Meridian Industries, Inc., in the U.S. District Court for the Western District of North Carolina, Charlotte Division. The Stipulation of Settlement memorializes an agreement by Meridian to pay a civil penalty of \$900,000 to address its RCRA violations. Meridian had previously owned a textile mill. It ceased operations in June 2003 but left all the chemicals from its operations onsite, and then sold the facility in September 2006. In July 2006 there was a fire at the facility, to which EPA On-Scene Coordinators, among others, responded. Following the fire, EPA conducted inspections, and one sampling visit at the facility. The results of these inspections and sampling visit indicated Meridian had violated numerous RCRA provisions. Specifically, Meridian failed to make a hazardous waste determination; stored hazardous waste without a permit; failed to have emergency preparedness and training; had container management violations; failed to equip the facility with necessary equipment; and failed to make emergency arrangements with local authorities. Meridian has since sold the facility, and the new owner

removed all the waste, and performed the necessary remedial work at the facility. Contact: Joan Redleaf Durbin, 404-562-9544; Brian Gross, 404-562-8604.

Region 4 Enters Into RCRA Section 3013 Order on Consent with Mosaic Fertilizer, LLC's, Riverview, Florida, Facility, as part of EPA's Mining and Mineral Processing National Initiative

On September 3, 2010, EPA and Mosaic Fertilizer, LLC, entered into a RCRA Section 3013 Order requiring Mosaic to investigate the nature and extent of any hazard posed by its operations at its Riverview, Florida facility. Specifically, the 3013 Order requires Mosaic to determine the nature and extent of any soil, groundwater, or surface water contamination at its Riverview facility. Mosaic is one of the phosphoric acid production companies involved in EPA's Mining and Mineral Processing National Initiative. As part of the global settlement EPA and DOJ are working to achieve with Mosaic, Mosaic agreed to perform investigative work pursuant to a consent order under Section 3013 of RCRA to determine if any corrective action is needed at the facility. Should the results of the 3013 Order indicate the need for corrective action the work will be incorporated into the final Consent Decree entered into between the United States and Mosaic. Contact: Joan Redleaf Durbin, 404-562-9544; John Kroske, 404-562-8613.

Region 4 Enters into a RCRA Consent Agreement and Final Order with East Carolina University for Hazardous and Universal Waste Management Violations

On September 1, 2010, a Consent Agreement and Final Order (CAFO) was approved by the Regional Judicial Officer, initiating and concluding an enforcement action pursuant to 40 C.F.R. § 22.13(b), for violations of the Resource Conservation and Recovery Act (RCRA). This enforcement action resulted from a June 3, 2009, RCRA Compliance Evaluation Inspection (CEI) of East Carolina University (ECU) conducted jointly by EPA and the North Carolina Department of Environment and Natural Resources. ECU is a state-supported institution of higher education located in Greenville, North Carolina, which is classified as a small-quantity generator of hazardous waste. The alleged violations included failure to perform hazardous waste determinations, failure to properly label hazardous and universal wastes, and improper management of hazardous and universal wastes in satellite accumulation areas and less than 180-day storage areas. Pursuant to the RCRA Civil Penalty Policy, a penalty of \$20,550 was assessed for settlement of the matter. Contact: Nancy McKee, 404-562-8674; Adam Dilts, 404-562-9581.

OGC Issues

Region 4 Receives CAA Title V Petition From Blue Ridge Environmental Defense League Regarding Votgle Electric Generating Plant in Waynesboro, Georgia

EPA recently received a Clean Air Act (CAA) title V petition dated August 10, 2010, for a nuclear electric generating facility (Votgle) in Waynesboro, Georgia. The petition raises four main issues including (in general summary) that the permit (1) lacks practically enforceable limits; (2) fails to properly limit hazardous air pollutants; (3) fails to protect public health; and (4) does not account for environmental justice issues. Region 4 is reviewing the petition. Contact: Vera Kornylak, 404-562-9589.

Region 4 Publishes Multiple Actions in the Federal Register

1. On September 21, 2010, EPA Region 4 published direct final and parallel proposed rules revising the Alabama State Implementation Plan (SIP) to include updates to the definition of volatile organic compounds (VOCs). These actions are not expected to generate any comments.
 2. On September 20, 2010, EPA Region 4 published a final action finding that the Birmingham 24-hour fine particulate matter nonattainment area has had three years of clean data for that standard. EPA published a proposal in June and received no comments.
 3. On September 15, 2010, EPA Region 4 published a final action revising the Kentucky SIP to add nitrogen oxides (NO_x) as a precursor for ozone in Kentucky's prevention of significant deterioration permitting program. EPA received adverse comments on the proposal for the addition (which was required by a federal rule) and the September 15, 2010, final action responds to the adverse comment. EPA does not anticipate a challenge to this final action.
 4. On September 14, 2010, EPA Region 4 published a proposed rule to revise the Georgia SIP to extend the attainment date for the Atlanta, Georgia 1997 8-hour ozone moderate nonattainment area from June 15, 2010 to June 15, 2011. Comments are due on or before October 18, 2010.
 5. On September 15, 2010, EPA published a notice of adequacy for the motor vehicle emissions budgets for the Knoxville, Tennessee 1997 8-hour ozone maintenance area. The new MVEBs must now be used for transportation conformity purposes. Contact: Vera Kornylak, 404-562-9589; Lynorae Benjamin, 404-562-9040.
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Region 5

Regular Highlights:

Enforcement and Compliance Assurance Issues

Seventh Circuit Court of Appeals Hears Oral Argument in Clean Air Act NSR case, *U.S. v. Cinergy*, on September 20, 2010

In May 2008, a jury found that Cinergy should have expected changes at its Wabash River Units 2, 3 and 5 (Terre Haute, Indiana) to increase actual annual emissions of SO₂ and NO_x. Following a remedy trial, in May 2009, the U.S. District Court for the Southern District of Indiana issued a partial final judgment on the Wabash River units. Among other things, the Judge ordered that Cinergy shut down Wabash River Units 2, 3 and 5 by September 2009. The Judge had previously decided on motion for summary judgment that the U.S. could not collect penalties for NSR violations that occurred more than five years before the U.S. filed its complaint.

Cinergy appealed the decision on the Wabash River plant to the 7th Circuit arguing that: (1) at the time of the Wabash River modifications (1992-94), the Indiana SIP provided for a potential-to-potential test for triggering nonattainment NSR requirements, and therefore it was error for the Judge to have instructed the jury to apply an actual-to-projected actual test; and (2) the District Court abused its discretion in admitting the testimony of EPA's experts, Dr. Koppe and Dr. Rosen, that the testimony should have been excluded because their methodology was created for litigation, never tested or peer reviewed, has no known error rate and is biased. The U.S. appealed the Wabash River decision arguing that the District Court erred in holding that NSR violations are "one-time" violations of the CAA and therefore the claim for civil penalties was time-barred under 28 U.S.C. 2462, the violations having occurred more than five years before the action was filed. The U.S. argued that Congress, in enacting the NSR provisions, and EPA, in implementing them, intended to create ongoing operating requirements.

Jason Dunn argued for the United States and Peter Keisler argued for Cinergy before a panel of 7th Circuit Justices Posner, Easterbrook and Rovner. The court took the matter under advisement at the close of argument. Contact: Gaylene Vasaturo, 312-886-1811; Tom Williams, 312-886-0814; Timothy Thurlow, 312-886-6623.

Region 5 Files a Consent Agreement and Final Order to Conclude Case Against Photocircuits Corp., d/b/a ECMC, Schaumburg, Illinois

On September 15, 2010, Region 5 filed a Consent Agreement and Final Order (CAFO) commencing and resolving simultaneously an administrative penalty action against Respondent Photocircuits Corp., d/b/a ECMC (ECMC), a printed circuit-board manufacturer with a facility in Schaumburg, Illinois, for allegedly violating Section 3005 of the Solid Waste Disposal Act. The CAFO provides for payment of a \$5,000 penalty by ECMC for violations of Section 3005 of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery

Act of 1976, as amended (RCRA), 42 U.S.C. § 6925. In the CAFO, ECMC certifies that it is in compliance with RCRA regulations.

On December 12 and 17, 2007, EPA inspected the Facility, a large quantity generator of hazardous waste (i.e., generates over 1,000 kilograms of hazardous waste per month), for RCRA compliance. The Facility was owned and operated at the time by Electro-Circuits, Inc., the predecessor corporation to ECMC. The main hazardous waste generated by the Facility's manufacturing process is corrosive waste acid, which is stored in two large storage tanks pending disposal.

The CAFO alleges that at the time of the inspection, the Facility had failed to meet several requirements of the EPA-authorized Illinois hazardous waste program and RCRA regulations, and therefore had failed to meet the conditions for exemption from having a permit to store hazardous waste. The violations include: (1) failure to label or mark the two hazardous waste storage tanks with the words "Hazardous Waste"; (2) failure to have a certified written tank assessment for the tanks reviewed and certified by a qualified professional engineer attesting that the tanks have sufficient structural integrity and are acceptable for the storage of hazardous waste; (3) failure to have appropriate secondary containment for the tanks; (4) failure to record hazardous waste tank inspections; (5) failure to conduct hazardous waste management training for employees and maintaining records of such training; and (6) failure to revise and submit a contingency plan. Although ECMC acquired the Facility after the 2007 inspection, successor liability attached to ECMC since it expressly assumed the liabilities of Electro-Circuits, Inc., in the purchase agreement. Electro-Circuits, Inc. is now dissolved.

Region 5 had initially proposed a penalty of \$518,368, but determined that it was appropriate and consistent with the penalty policy to adjust the penalty to \$5,000 based on financial information provided by ECMC as well as ECMC's cooperation and good faith. During negotiations, ECMC provided affidavits and information to EPA that the Facility had returned to compliance but claimed an inability to pay the proposed penalty. The financial information was reviewed by a Region 5 financial analyst who determined ECMC had an inability to pay other than a very limited penalty amount. Contact: Mark Palermo, 312-886-6082.

Region 5 Files a Consent Agreement and Final Order Commencing and Concluding A Proceeding with PCS Nitrogen Ohio, L.P. located in Lima, Ohio for Violation of NSPS Requirement for Nitric Acid Plant

On September 21, 2010, Region 5 filed a Consent Agreement and Final Order concluding a Proceeding with the Respondent to settle violations of New Source Performance Standards for Nitric Acid Plants at 40 C.F.R. Sections 60.7(c) and 60.73(e). Specifically, Respondent failed to report all periods of excess emissions (including those occurring during start-up, shut-down and/or malfunction events) in its excess emission reports during 2006 and 2007. Region 5 initiated pre-filing discussions on this matter in July 2010. The proposed penalty was \$18,053. During settlement discussions, Respondent agreed to pay a civil penalty of \$18,053. Contact: Gaylene Vasaturo, 312-886-1811; Kevin Vuilleumier, 312-886-6188.

United States District Court for the Northern District of Alabama Enters Consent Decree Resolving Violations of Multiple Environmental Statutes by McWane, Inc. at 28 Facilities in 14 States

On September 20, 2010, the United States District Court for the Northern District of Alabama entered a consent decree resolving over 400 violations of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), the reporting requirements of the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Safe Drinking Water Act and the Toxic Substances Control Act by McWane, Inc. The consent decree was lodged on July 14, 2010. The consent decree resolves violations at 28 facilities owned and operated by McWane in 14 states and includes injunctive relief, a civil penalty of \$4 million and seven supplemental environmental projects (SEPs) on which McWane will expend no less than \$9.1 million.

Four of the 28 facilities addressed in the consent decree are in Region 5 including Clow Water Systems in Coshocton, Ohio and three Manchester Tank & Equipment Company facilities located in Quincy, Illinois, Bedford, Indiana and Elkhart, Indiana. Region 5's share of the cash penalty is \$1,009,793 million. In addition, two of the SEPs will be performed in Region 5 at an estimated cost of \$3,590,000. The SEPs include diesel retrofits in Coshocton, Ohio and conversion of a wet spray paint booth to dry coatings that will eliminate all emissions (50 tons per year) of volatile organic compounds (VOCs) at the Manchester Tank facility in Bedford, Indiana. In addition to eliminating VOC emissions, the SEP requires McWane to implement control measures to limit the amount of phosphorus discharged in its wastewater to 50 mg/l. The wastewater is currently not subject to any phosphorus limits in its industrial user permit.

Seventy-five of the approximately 400 violations that were alleged in the complaint are violations at the four McWane facilities in Region 5. The violations resolved by the consent decree were discovered through a multi-media inspection conducted by the Region at the Clow Water Systems facility in 2004 and through environmental audits conducted by McWane in 2001 and 2004. McWane corrected most of the violations prior to the lodging of the consent decree. As a result, only a limited amount of injunctive relief is required by the consent decree. The cost of injunctive relief implemented by McWane at Region 5 facilities is estimated at \$6,015,102 and includes, among other things, installation of a new wet cap to maintain cupola afterburner operating temperature at the Clow Water Systems facility, implementation of a RCRA closure plan for the cement-lined cooling pond at Clow, and development and implementation of an environmental management system at all four facilities in the Region.

The alleged violations at the Clow Water Systems facility include, among other things, violations of the Prevention of Significant Deterioration and Title V permit provisions of the Clean Air Act at the cupola furnace. To address these violations, the consent decree requires that particulate matter emissions from the exhaust stack for the cupola furnace not exceed 0.078 lbs per ton of molten iron produced and establishes a 5-year schedule for stack tests to assess compliance with this emission limit. Particulate emissions are expected to be reduced by approximately 70 tons per year.

During the multimedia inspection of Clow Water Systems and through a subsequent information request, the Region found numerous violations of the RCRA hazardous waste requirements including, among other things, storage of hazardous waste (lead and cadmium) in a surface impoundment (cooling pond) without a permit. To correct these violations, Clow Water Systems agreed to perform a RCRA closure of the cooling pond and, as part of the closure, removed approximately 750 tons of sludge containing hazardous waste from this surface impoundment.

Violations of the Clean Water Act by McWane include systemic non-compliance with EPA's storm water management requirements. Consistent with this pattern, the Region found numerous deficiencies in the development and implementation of the Storm Water Pollution Prevention Plan (SWPPP) at the Clow Water Systems facility. McWane has corrected the SWPPP deficiencies at the Clow facility. McWane also corrected storm water management problems at the Manchester Tank facility in Quincy, Illinois. Contact: Christine Liszewski, 312-886-4670; Sheila Desai, 312-353-4150; Michael Beedle, 312-353-7922; Carol Staniec, 312-886-1436; James Entzminger, 312-886-4062.

Region 5 Enters an Administrative Order on Consent Under RCRA 7003 for completion of corrective action at Univar's South Bend, Indiana Facility

On September 15, 2010, EPA Region entered an Administrative Order on Consent (AOC) with Univar USA, Inc. for completion of a Resource Conservation and Recovery Act (RCRA) corrective action at Univar's South Bend, Indiana facility. EPA issued its Final Decision selecting the remedy for the Univar facility in March 2010; the AOC requires Univar to complete the remedy as set out in EPA's Final Decision and provides a schedule for completion of the required activities. Univar is performing corrective measures for releases of contamination to ground water including enhanced biodegradation and soil vapor extraction. Univar's federal corrective action permit expired and the state of Indiana currently has the corrective action permitting authority. For this reason, EPA and the state thought it best for EPA to continue to completion with the corrective action; therefore, EPA issued the AOC to require completion of the corrective action. Contact: Gaylene Vasaturo, 312-886-1811; Donald Heller, 312-353-1248.

Consent Agreement and Final Order Executed in CWA Administrative Action: Stanley Spungen, d/b/a/ Eastown Realty

On September 11, 2010, the Regional Administrator executed a Consent Agreement and Final Order Commencing and Concluding the Proceeding (CAFO), which resolved violations of the Residential Lead-Based Paint Hazard Reduction Act, alleged to have been committed by Stanley Spungen d/b/a Eastown Realty, Respondent. The CAFO provides for payment of a \$2,800 civil penalty, and Mr. Spungen's commitment to complete supplemental environmental project costing \$25,200.

This civil administrative action was commenced and concluded pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18, by the filing of the

CAFO which both initiated and concluded the action. Respondent is alleged to have failed to provide statements and disclose information regarding lead paint hazards, as required, to various persons at the time they leased properties that he owned in Grand Rapids, Michigan, during 2005 and 2006. Complainant initially determined a proposed penalty amount of \$40,240 to be appropriate, based upon admissible evidence. As a consequence of pre-filing negotiations and Respondent's commitment to complete supplemental environmental projects, which include replacing lead painted windows with non-lead painted windows on some of his properties, Complainant believes that the settlement reached is in the public interest and appropriately resolves the violations alleged. Contact: Richard R. Wagner, 312-886-7947.

Region 6

Regular Highlights:

Enforcement and Compliance Assurance Issues

EPA FY 2010 Annual State Review of the TCEQ Enforcement Program

Staff from the Water Resources Section, Drinking Water Program conducted the FY 2010 Annual State Public Water Supply Enforcement program review of TCEQ on September 21-22, 2010 in Austin, Texas. The goal of this evaluation was to ensure that timely and appropriate State enforcement actions are taken. Elements to be reviewed include: reporting of enforcement actions; adherence to the State escalation policy; new Enforcement Response Policy (ERP) Targeting Tools; implementation of new rules, and addressing Significant Non-Compliers (SNCs). Contact: Mehdi Taheri, 214-665-2298.

Audit Program for Texas Flexible Permit Holders

The Final Notice of the Clean Air Act (CAA) voluntary audit compliance program for flexible permit holders in the State of Texas (Audit Program) was signed by the Region 6 Administrator on September 20, 2010. The package was forwarded to Washington for publication in the Federal Register on the same day and included EPA's response to public comments that were solicited on June 17, 2010. It is anticipated that the Final Notice for the Audit Program will appear in the Federal Register within 7 to 10 days. In the meantime the final Audit Program document and the draft Audit Agreement with attached Consent Agreement and Final Order (CAFO) are available on our Regional website as well as the Audit Program's electronic docket. This program presents a pathway for companies with Texas flexible permits to obtain air permits that are federally enforceable and include clearly identified emission limits and its associated monitoring, record keeping and reporting. For completing the Audit process, companies will receive liability protection for past noncompliance related to those non-compliance issues alleged in the CAFO. The program also contains requirements for the companies to develop community based projects to help mitigate past environmental impacts. Contact: John L. Jones, 214-665-7233.

Opportunity to Confer for TX Flexible Permit Holders

EPA sent Opportunity to Confer letters dated September 20, 2010, to 71 companies representing 108 Texas facilities that have been issued Flexible Permits from the Texas Commission on Environmental Quality. The letters advised companies that EPA is offering two paths to meet Clean Air Act requirements for their facilities: Facilities can enter the EPA Audit Program (information is available on the Region 6 public web site <http://www.epa.gov/region6>) or they can enter into a streamlined enforcement settlement to negotiate a set of unit-specific limits and other requirements that will be included in a federally-approved permit. Companies will have ninety days to confer with EPA. Contact: Debbie Ford, 214-665-7235; Patricia Welton, 214-665-7327.

Comanche Peak Nuclear Power Plant Expansion Public Meetings

The Nuclear Regulatory Commission held two public meetings on September 21, 2010, to gather comments from the public regarding the Draft Environmental Impact Statement (EIS) for the Combined Licenses for Comanche Peak Units 3 and 4. The addition of these units would double the capacity of the plant. Many residents of Glen Rose and Granbury provided general statements in support of the expansion. Many people expressed concerns regarding potential impacts to water; specifically, 1) reduced water levels in Lake Granbury 2) the amount of water needed by Comanche Peak compared to future needs of an increased population, and 2) the quality of the water (Total Dissolved Solids (TDS) and Salinity). The two new units will be drawing water from Lake Granbury and discharging it there as well. Additional water may be needed from Possum Kingdom Lake (Brazos River Authority will release water from the dam). The comment period ends on October 27, 2010. Contact: Sharon L. Osowski, 214-665-7506.

Fleet Management, Limited, Sentenced to Pay \$3 Million Criminal Fine

Southern District of Texas, Corpus Christi Division: On September 9, 2010, Fleet Management, Limited, the operator of the *M/V Lowlands Sumida*, was sentenced to pay a criminal fine of \$3 million, establish an environmental compliance plan for its entire fleet and serve 4 years on probation. Fleet Management plead guilty on June 3, 2010 to failing to maintain an accurate oil record book as required by the Act to Prevent Pollution from Ships, making false statements to the Coast Guard and obstructing a federal investigation. A whistleblower was awarded \$200,000 for his assistance in uncovering the crime. A company superintendent and the vessel's chief engineer and second engineer were also indicted on similar charges that arose out of an investigation that revealed their conspiracy to use a dummy sounding tube to conceal excess oily wastewater stored on the ship.

This was Fleet Management's third criminal conviction. The company was convicted in California for negligent discharge of oil, making false statements and obstruction of justice after its vessel *Cosco Busan* allided with the San Francisco Bay Bridge, spilling 53,000 gallons of oil in 2007. In Pennsylvania, the company was convicted of presenting a false document after it was discovered that its vessel the *Valpariso Star* failed keep proper records of its waste oil disposal.

This case was investigated by the Corpus Christi Environmental Crimes Task Force composed of agents from the U.S. Coast Guard, TCEQ, Texas Department of Parks and Wildlife, and the EPA. It was prosecuted by the Department of Justice Environmental Crimes Section. Contact: William R. Miller, 713-209-4909.

Clean Water Act Action Plan (CWAAP) Meeting with TCEQ, Austin, TX

As part of EPA's Clean Water Act Action Plan (CWAAP), Region 6's Water Enforcement and Permitting Programs have committed to meet with our respective NPDES counterpart programs in each of our five States by the end of calendar 2010. R6 water program and legal managers met with managers from the Texas Commission on Environmental Quality (TCEQ) on September 16, 2010, to discuss various water permitting and regulatory issues. The agencies were able to coordinate enforcement and permitting efforts and develop common objectives for the upcoming

year. The primary purpose of CWAAP meetings is to identify and discuss shared priorities; collaborate to achieve specified goals and measures; and develop a strategic and coordinated approach in carrying out the NPDES program. Contact: Scott McDonald, 214-665-2718

U.S. District Court Grants Unopposed Motion for Entry of Consent Decree in United States vs. Plains All American Pipeline, L.P.

On September 20, 2010, the U.S. District Court issued an order granting the United States' unopposed motion for entry of a Consent Decree between Plaintiff United States, on behalf of Region 6, and Defendant Plains All American Pipeline, L.P. (Plains). The Consent Decree resolves Settling Defendant's liability for violations of Section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3) in the form of a \$3.25 million civil penalty and injunctive relief valued at approximately \$41 million. The injunctive relief requires work designed to ensure protective and preventive measures are taken on over 10,000 miles of pipeline in order to avoid future oil spills. The complaint alleged that on multiple occasions between April 2004 and May 2005, Plains released crude oil from pipelines and other facilities into navigable waters of the U.S. throughout Louisiana, Oklahoma and Texas. One such release includes the spill of 4,500 barrels of crude oil into the Pecos River. Most of the pipeline spills were caused by corrosion. Contact: Edwin Quiñones, 214-665-8035.

Settlement Reached with Bureau of Indian Education, New Mexico North Education Line Office Regarding Violations of AHERA

The Bureau of Indian Education has signed a CAFO resolving violations discovered by Region 6 during an inspection of two schools within the jurisdiction of the New Mexico North Education Line Office. During the inspection, Region 6 discovered several violations of the Asbestos Hazard Emergency Response Act (AHERA), including failure to conduct asbestos reinspections of the schools since 2000. BIE has spent more than \$20,000 bringing the two schools into compliance with AHERA, fully mitigating the proposed penalty. Contact: Elvia Evering, 214-665-7575; Angela Hodges, 214-665-2796

Opportunity to Confer for TX Flexible Permit Holders

EPA sent an Opportunity to Confer letter dated September 20, 2010, to 71 companies representing 108 Texas facilities that Texas Commission on Environmental Quality issued Flexible Permits. The letter advised companies that EPA is offering three paths to meet Clean Air Act requirements for their facilities: Facilities can enter the EPA Audit Program (information is available on the Region 6 public web site <http://www.epa.gov/region6>), they can enter into a streamlined enforcement settlement to negotiate a set of unit specific limits and other requirements that will be included in a federally-approved permit(s), or they can go through a permitting transition process with the state. Companies will have ninety days from receipt of the letter to confer with EPA. Contact: Patricia Welton, 214-665-7327; Debbie Ford, 214-665-7235.

Texas Flexible Permits: Voluntary Audit Program Goes Final

On September 20, 2010, the Region 6 Administrator signed the Final Notice of Clean Air Act (CAA) voluntary audit compliance program for Texas flexible permit holders. The audit

program provides a mechanism for flexible permit holders to transition their non-SIP approved flexible permits, with cap-based emission limits, to SIP-approved NSR permits, incorporating emission unit-specific limits. Under the program, flexible permit holders would, through an independent third party audit, identify all federally-enforceable unit specific emission limitations, requirements and monitoring methods for determining compliance for all units covered by a facility's flexible permit. The emission unit requirements agreed upon during a post-audit negotiation with EPA would be memorialized in a Consent Agreement and Final Order (CAFO) with EPA. The CAFO would set forth the agreed upon emission unit requirements and would require their inclusion in an amended Title V permit and appropriate federally-enforceable non-Title V permits (e.g., NSR, State Implementation Plan permits). The audit program offers permit holders the opportunity to significantly reduce certain liabilities under the Clean Air Act. Contact: Justin Lannen, 214-665-8130.

Region 7

Regular Highlights:

Enforcement and Compliance Assurance Issues

Region 7 Reaches Agreement in Dispute Resolution Pertaining to Financial Assurance Requirements of 2004 Consent Decree for Coffeyville and Phillipsburg Kansas Refineries

On September 20, 2010, Region 7 and DOJ reached a final agreement in an ongoing dispute resolution proceeding regarding financial assurance established pursuant to the a 2004 Consent Decree for corrective action at two RCRA regulated facilities in Coffeyville and Phillipsburg, Kansas. The 2004 Consent Decree was entered with Coffeyville Resources Refining & Marketing, LLC (CRRM) and Coffeyville Resources Terminal, LLC (CRT)(Civ. No. 04-CV-1064-MLB). These facilities were formerly owned by Farmland Industries, and are now owned by CRRM and CRT. The matter in dispute resolution process involved CRRM and CRT's attempt to access cash financial assurance required by the 2004 Consent Decree in order to pay for ongoing expenditures under two RCRA administrative corrective action orders. In pleadings filed in July 2010, EPA and DOJ argued that the 2004 Consent Decree required this cash financial assurance be reserved for the final corrective action remedies for the facilities, and that should it not be used for short term expenditures under the Orders. After extensive negotiations, the agreement reached by the parties reserved \$5,000,000 in cash (in the form of a surety bond) for a final remedy at the Phillipsburg facility, and required that CRRM and CRT establish alternate financial assurance for the ongoing work under the existing orders. The agreement has been signed by representatives of EPA, KDHE, CRRM and CRT and is viewed as a non-material modification of the Consent Decree, authorized under the Financial Assurance and Dispute Resolution procedures of the Decree. Contact: Howard Bunch, 913-551-7879.

Region 7 Enters Consent Agreement and Final Order with Tanco Kansas City, LLC for Violations of CWA and EPCRA Requiring Penalty Payment of \$98,845

On September 22, 2010, following public notice and comment, Region 7 entered a Consent Agreement and Final Order with Tanco Kansas City, LLC, which resolved Tanco's SPCC and FRP violations of Sections 311(j) of the Clean Water Act (CWA) and 40 C.F.R. Part 112, and Tier II reporting violations of Section 312(a) of EPCRA and 40 C.F.R. §§ 370.20 and 370.25. The CAFO is the product of pre-filing negotiations that were initiated in December 2009. Specifically, the CAFO requires Tanco to pay a \$97,845 penalty, divided between a penalty of \$4,500 for the cited violations of EPCRA, and \$93,345 (plus interest) for the cited SPCC and FRP violations of the CWA (paid over three installments). The CAFO also requires Tanco to certify that it has taken steps to address these violations and is now in compliance with the CWA and EPCRA and each statutes' regulations. This CAFO represents the second Region 7 administrative penalty settlement for FRP violations to date. Contact: Howard Bunch, 913-551-7879.

Region 8

Regular Highlights:

Enforcement and Compliance Assurance Issues

DOJ Files Motion To Enter Past Costs Consent Decree For The South West Assay Superfund Site in Washington County, Utah

The South West Assay Site is a historic mining facility upon which EPA conducted a removal action due to the activities of the current owner, Ray Crosby. In 2004, Mr. Crosby began significant Site-wide excavation of existing contaminated soils and tailings materials that exacerbated Site threats and caused increased migration of mining waste on and off-Site. On April 16, 2004, Region 8 issued a Cease and Desist letter to Ray Crosby. When ignored, EPA issued a Unilateral Administrative Order (UAO) on April 28, 2004. Mr. Crosby took only ineffective and incomplete steps towards implementing the work identified in the UAO and, as such, EPA took over the work in December of 2004. EPA spent \$2,590,366.22 on Site cleanup. A final POLREP was issued on June 20, 2006, placing the target statute of limitations for June of last year. Before the expiration of the limitations period, the Agency referred the matter to the Department of Justice and secured the necessary tolling agreements from Ray Crosby.

Subsequent analysis of Mr. Crosby's financial documentation resulted in the Agency's offer of a 122(h) Ability to Pay Cashout Consent Decree, and, by July of 2010, Mr. Crosby and EPA reached agreement that Crosby would pay \$100,000 in two (2) \$50,000 installments. Having received no comments during the 30-day public comment period, on September 20, 2010 the Department of Justice filed a motion to enter the Consent Decree. Contact: Mia Bearley, 303-312-6554.

Consent Decree Lodged In RCRA Section 7003 Enforcement Action

On September 20, 2010, a consent decree was lodged with the US District Court for Wyoming, proposing to settle an action brought by the United States against High Plains Resources, Inc. (HPR) for violations of a RCRA Section 7003 order (7003 order). The 7003 order was issued by Region 8 in 2006, because HPR's mismanagement of oily waste at its oil and gas exploration and production wastewater disposal facility was endangering wildlife. The proposed consent decree requires HPR to operate the facility pursuant to an EPA-approved work plan that will help ensure that the threats to wildlife are permanently abated. HPR must also fill an irrevocable trust with \$206,000.00, over time, for closure of the facility. HPR is required to review its cost estimate annually, and add to the fund if the expected costs of closure increase. HPR must also pay a penalty of \$40,000.00 over time. Contact: Chuck Figur, 303-312-6915.

Region 8 Issues Proposed Compliance Order and Penalty Complaint for Violations of the UIC program in South Dakota

On September 14, 2010, Region 8 issued *Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing* (complaint) to Welfl Construction Corporation in Yankton,

South Dakota. The complaint alleges violations of the Underground Injection Control requirements of the Safe Drinking Water Act, proposes compliance requirements (proper closure of a motor vehicle waste disposal well), and the assessment of a civil penalty. Contact: David J. Janik, 303-312-6917.

Region 8 Issues Proposed Compliance Order and Penalty Complaint for Violations of the UIC Program in South Dakota

On September 14, 2010, Region 8 issued *Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing* (complaint) to Nick's Garage, LLC, in Sioux Falls, South Dakota. The complaint alleges violations of the Underground Injection Control requirements of the Safe Drinking Water Act, proposes compliance requirements (proper closure of a motor vehicle waste disposal well), and the assessment of a civil penalty. Contact: David J. Janik, 303-312-6917.

Region 8 Issues Proposed Compliance Order and Penalty Complaint for Violations of the UIC program in South Dakota

On September 14, 2010, Region 8 issued *Proposed Compliance Order, Penalty Complaint, And Notice Of Opportunity For Hearing* (complaint) to The Road Guy Construction, Inc., in Yankton, South Dakota. The complaint alleging violations of the Underground Injection Control requirements of the Safe Drinking Water Act, proposes compliance requirements (proper closure of a motor vehicle waste disposal well), and the assessment of a civil penalty. Contact: David J. Janik, 303-312-6917.

EPCRA Administrative Complaint Issued To Cenex Harvest States – Milk River Cooperative

On September 21, 2010, a Complaint was issued to Cenex Harvest States (CHS) alleging two violations of Section 312 of EPCRA, 42 U.S.C. § 11022, arising from the failure by CHS to submit "Tier II" reports for hazardous chemicals it was storing at its facility in Malta, Montana. During an EPA inspection, it was discovered that CHS was storing an agricultural product (Rascal Plus) containing salt of glyphosate, and another product (RT-3) containing potassium salt of glyphosate. Salt of glyphosate and potassium salt of glyphosate are hazardous chemicals subject to EPCRA reporting requirements. EPA determined that the amount of each chemical being stored exceeded the reporting threshold of 10,000 lbs, and that CHS had failed to submit the required Tier II reports to the Montana State Emergency Response Commission by the due date of March 1, 2009. The complaint proposes a penalty of \$13,300. Contact: Linda Kato, 303-312-6852).

Region 8 Issues Administrative Order to Concentrated Animal Feeding Operation in Colorado.

On September 20, 2010, EPA Region 8 issued an Administrative Order for Compliance to the Cactus Hill Ranch Company, owner and operator of a concentrated animal feeding operation (CAFO) near Fort Collins, Colorado. Based on observations during a joint EPA/ State of Colorado inspection, the order alleges that this CAFO has violated the Clean Water Act by

discharging pollutants to waters of the U.S. without a permit. The order directs the CAFO, among other things, to stop discharging, to conduct daily monitoring of potential sources of discharges and precipitation, to report to EPA and the State of Colorado if it discharges any pollutants, to report on actions to remove manure and other waste from roadside ditches, to submit a Best Management Practice implementation plan to EPA, and, unless it can demonstrate no further discharges will occur from the CAFO, to apply for an NPDES permit. Although the State of Colorado has primary enforcement authority to administer the NPDES program, EPA participated in the inspection and issued the order as part of its national enforcement initiative. Contact: Peggy Livingston, 303-312-6858.

Region 8 Issues Administrative Order to Owner of Montana Campground for Drinking Water Violations

On September 20, 2010, Region 8 issued an Administrative Order to Brent Shaw, owner of the Armstead Campground in Beaverhead County, Montana. The order alleges that Mr. Shaw violated the National Primary Drinking Water Regulations (NPDWRs) by failing to monitor the campground's water for turbidity, for residual disinfectant, and for coliform bacteria; failing to achieve 99.9% removal of *giardia lamblia* cysts, 99.99% removal of viruses, and 99% removal of *Cryptosporidium*; failing to report turbidity measurements, disinfection information and contact time information to the State of Montana; and failing to notify Montana and the public of its violations. The order requires the respondent to submit a plan and schedule for coming into compliance with applicable filtration and disinfection, monitoring, reporting, and public notice requirements. Although Montana has primary authority for enforcing the public water supply protection program, EPA issued this order because the Montana referred this case to EPA. Contact: Peggy Livingston, 303-312-6858.

Region 8 Issues Second Administrative Order to Public Water System in Montana.

On September 23, 2010, EPA Region 8 issued an administrative order to the Church Universal and Triumphant, Inc., owner and/or operator of the Sphinx Mountain Mobile Home Park in Gardiner, Montana. The order alleges violations of the gross alpha particle activity maximum contaminant established by the National Primary Drinking Water Regulations (NPDWRs). EPA issued this order because Montana, which has primary authority for enforcing the public water supply protection program, referred the case to EPA. In 2009, EPA issued another order alleging other NPDWR violations at this system. Contact: Peggy Livingston, 303-312-6858.

Region 9

Regular Highlights:

Enforcement and Compliance Assurance Issues

Region 9 Files Administrative Complaint Against Jazmin Family Trust

On September 13, 2010, Region 9 filed an administrative complaint and proposed administrative order against Jose P. Jazmin and Betty Jazmin, Trustees of the Jazmin Family Trust, for continuing to operate two large capacity cesspools after April 5, 2005, in violation of 40 C.F.R. § 144.89. The large capacity cesspools service an apartment complex in Kailua-Kona, Hawaii. The complaint and proposed administrative order was public noticed on September 15, 2010. Contact: Maya Kuttan, 415-972-3897

Region 9 Settles RCRA Violations at Bronze-way Plating Corporation in Los Angeles, CA

On September 21, 2010, EPA Region 9 entered into a Consent Agreement and Final Order to initiate and simultaneously resolve a case against Bronze-way Plating Corporation for RCRA hazardous waste violations at its facility in Los Angeles, CA. Based on a March 2009 inspection, EPA's allegations against Bronze-way include: (1) the failure to close containers of hazardous waste; (2) the failure to comply with personnel training requirements; (3) the failure to comply with contingency plan requirements; and (4) storage of hazardous waste without a permit and failure to label hazardous waste. Bronze-way has agreed to pay a penalty of \$7,000. Contact: Mimi Newton, 415-972-3941

Custom Building Products, Inc. Pays \$6,500 to Resolve Pesticide Violation

On September 21, 2010, EPA Region 9 issued a Consent Agreement and Final Order to initiate and simultaneously resolve a case against Custom Building Products for a violation of section 12(a)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136j(a)(1)(A), which prohibits distribution or sale of unregistered pesticides. Custom Building Products distributed or sold to Home Depot OneStep Cleaner & Resealer with a label claiming that the product inhibits growth of mold and mildew -- pesticidal claims since mold and mildew are "pests" under FIFRA. Custom Building Products will pay a \$6,500 penalty. Contact: Margaret Alkon, 415-972-3890

OGC Issues

EPA Files Cross-Motion for Summary Judgment in D.C. District Court Action

On September 17, 2010, EPA filed an Opposition to Plaintiff's Motion for Judgment on the Pleadings and Cross-Motion for Summary Judgment in litigation filed under Clean Air Act (CAA) §165(c) by Avenal Power Company, LLC (Avenal) in the District Court for the District of Columbia. Avenal, an applicant for a CAA PSD permit from EPA Region 9, has requested that the Court issue an order (1) preventing EPA from imposing new air quality standards such as the 1-hour NO₂ NAAQS to the Avenal Energy Project, and (2) requiring the Administrator to

issue a decision, conclusive of all internal EPA proceedings and constituting final agency action, that grants Avenal's pending PSD permit by December 31, 2010. EPA's cross-motion argues that the 1-hour NO₂ NAAQS, effective April 12, 2010, applies to Avenal's project and requests that the Court issue a schedule for EPA to make a final Regional permit decision by December 31, 2010. Contact: Julie Walters, 415-972-3892.

Region 10

Regular Highlights:

Enforcement and Compliance Assurance Issues

Region 10 Issues Notice of Noncompliance to DeCastro Family, LLC, for Violations of the Lead Paint Disclosure Rule at 1724 SW Myrtle Street, Portland, Oregon 97201

Region 10 issued a Notice of Noncompliance to Mrs. Alma DeCastro of DeCastro Family, LLC, owner of the property located in Portland, Oregon, for violations of the Disclosure Rule, 40 C.F.R. Part 745, Subpart F – Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property. The Disclosure Rule requires each Lessor involved in the leasing of target housing to carry out specific actions to ensure that Lessees receive disclosure of the presence of any known lead-based paint and/or lead-based paint hazards; receive available records and reports; receive a lead hazard information pamphlet; and receive specific disclosure and warning language within, or as an attachment to, contracts to lease target housing before a lessee is obligated under a contract to lease target housing. EPA alleged that DeCastro Family, LLC, failed to ensure compliance with the requirements of the Disclosure Rule by failing to carry out the obligations required of a Lessor. The Disclosure Rule is intended to prevent lead-based paint poisoning in certain (pre-1978) residential housing. Contact: Bob Hartman, 206-553-0029; Maria Tartaglia, 206-553-1128.
